IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 814 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEMON MOHMED SAFI ABDUL KADAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 814 of 2005

MR BIPIN P JASANI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

MR GAURAV P THAKOR for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 27/04/2005

ORAL JUDGEMENT

RULE. Learned A.G.P., Shri Hasurkar waives

notice of rule on behalf of the respondent Nos.1 to 3 and learned Advocate Shri Thakor waives notice of rule on behalf of the respondent No.4. At the request of the parties, the petition is taken up for disposal today.

2. In the present petition, the petitioner has challenged the order dated 7/8/2004 passed by the District Education Officer, Ahmedabad City. By the said order the request of the respondent No.4 - School Management for granting approval to the appointment of the petitioner as Shikshan Sahayak came to be turned down. Reason indicated in the impugned order for rejection of the request is that the school management did not carry out the directions of the authorities for absorbing one Shri H.P.Mansuri, who was declared as surplus Head-clerk. The petitioner has produced on record an order dated 3/10/2003 passed by the D.E.O., in which it is mentioned that the order for absorption of Shri Mansuri in respondent No.4 - school is reviewed and the said order is cancelled. Since, by October, 2003, the order for absorption to Mansuri in respondent No.4 school, itself was cancelled, I do not find any justification for the respondents authorities to refuse to approve the appointment of the petitioner solely on the ground that the school management did not absorb Shri Mansuri as Head-clerk. The said order therefore, cannot be sustained.

3. Learned A.G.P., Shri Hasurkar further pointed out that the authorities have found number of other objections to the selection and the appointment of the petitioner. Since, no conclusions have been reached in this regard, I do not express any opinion on such objections. Suffice it to say that the authorities shall have to consider the question of granting approval to the appointment of the petitioner on its merits ignoring its earlier stand that, approval cannot be granted since school management failed to absorb Shri Mansuri as Head-clerk.

4. In the result, the impugned order dated 7/8/2004 is quashed. The authorities are directed to consider the question of approving the appointment of the petitioner on its merits. A final decision in this regard shall be taken within the period of two months from the date of receipt of copy of this order. With the above directions, the petition is disposed of. Rule made absolute to the aforesaid extent. No order as to costs. Direct Service is permitted.

(Akil Kureshi, J.)

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